

The Honorable John C. Coughenour
The Honorable Marsha Pechman
The Honorable James L. Robart

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

LUIS TORRES, Individually and on behalf of
all others similarly situated,

Plaintiff,

vs.

MICROSOFT CORPORATION, a Washington
Corporation,

Defendant.

No. 07-CV-1121 JCC

Hon. John C. Coughenour

DECLARATION OF ERIC J. BENINK
IN SUPPORT OF DESIGNATION OF
KRAUSE KALFAYAN BENINK &
SLAVENS, LLP AS INTERIM
COUNSEL FOR THE PUTATIVE
CLASS PURSUANT TO FED.R.CIV.P.
23(g)(2)(A)

STEVE CARLIE, Individually and On Behalf
of All Others Similarly Situated,

Plaintiff,

vs.

MICROSOFT CORPORATION, a Washington
Corporation,

Defendant.

No. 07-CV-1132 CMP

Hon. Marsha J. Pechman

[Caption continues on next page.]

1	CHRISTINE MOSKOWITZ and DAVID)	No. 07-CV-1270
2	WOOD, Individually and on behalf of all others)	
3	similarly situated,)	Hon. John C. Coughenour
4	Plaintiffs,)	
5	vs.)	
6	MICROSOFT CORPORATION, a Washington)	
7	Corporation,)	
8	Defendant.)	

9	HEIDI LING, As Parent And Natural Guardian)	No. 07-CV-1271
10	Of ROBERT LING, III , Individually and on)	
11	behalf of all others similarly situated,)	Hon. James L. Robart
12	Plaintiff,)	
13	vs.)	
14	MICROSOFT CORPORATION, a Washington)	
15	Corporation,)	
16	Defendant.)	

ERIC J. BENINK hereby declares as follows:

1. I am an attorney admitted to practice in the state of California and am seeking admission *pro hac vice* in this case. I am a partner in the law firm of Krause Kalfayan Benink & Slavens, LLP ("Krause") in San Diego and am the managing attorney at Krause for this litigation.

2. I submit this Declaration in support of the motion by Plaintiffs in the above-captioned actions to appoint the firms of Stritmatter Kessler Whelan Coluccio, Chitwood Harley Harnes, LLP, The Hodkin Kopelowitz Ostrow Firm, P.A., Kabateck Brown Kellner LLP, Keller Rohrback LLP, Krause Kalfayan

1 Benink and Slavens, LLP, and Wasserman Comden & Casselman, LLC as interim
2 counsel to act on behalf of the putative class pursuant to Fed.R.Civ.P. 23(g)(2)(A).
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4 3. Krause has done significant work in identifying and investigating
5 potential claims in this action. Over the past three months, we have conducted
6 factual research into the problem of Microsoft Corporation's ("Microsoft") Xbox
7 360 gaming consoles (the "Xbox 360") and specifically the fact that the Xbox 360
8 has and had a continuing problem with scratching and ruining game disks and
9 other optical media loaded into the Xbox 360's included DVD-drive. We have
10 performed extensive legal research in determining what causes of action these
11 underlying facts will support as well as whether or not a class can be certified in
12 this matter. We have expended time responding to inquiries from members of the
13 putative class and interviewing prospective representative plaintiffs.
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18 4. To date, attorneys and support staff at Krause have expended over 40
19 hours in this matter.
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21 5. Krause and its partners have substantial experience in representing
22 plaintiffs in class actions; our partners have achieved more than \$200 million in
23 recoveries for their clients in cases where they have acted as counsel. A copy of
24 Krause's firm resume is annexed hereto as Exhibit "A", but I wish to highlight
25 some of the more significant achievements in our long history of handling class
26 action litigation.
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1 6. We recently served as the lead counsel in a class action brought on
2 behalf of San Diego sewer customers against the City of San Diego for sewer fee
3 overcharges. On May 18, 2007, we obtained final approval of a \$40 million
4 settlement with the City of San Diego.
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6 7. We currently serve on the executive committees in two significant
7 anti-trust class actions, *In Re Natural Gas Antitrust Cases I, II, III, and IV*, San
8 Diego Superior Court (JCCP 4221, 4224, 4226, and 4228) and *In Re Dynamic*
9 *Random Access (DRAM) Antitrust Lit.* (MDL 1486) (pending before the United
10 States District Court, Northern District of California.) Settlements achieved, to
11 date, in the *Natural Gas* action are approximately \$159.4 million.
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15 8. We acted as co-lead counsel in *National Metals, Inc. v. Sumitomo*
16 *Corporation, et al.*, Case Number GIC734001, *Heliotrope General, Inc., et al. v.*
17 *Sumitomo, et al.*, Case Numbers 701679 and 701680 Superior Court, San Diego
18 County wherein we achieved settlements of approximately \$87 million for classes
19 of victims of the antitrust conspiracy involving the copper markets.
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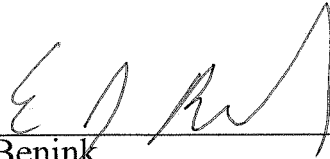
22 8. The attorneys at Krause devote a significant portion of their practice
23 to the representation of plaintiffs in consumer class actions against companies in
24 the personal and information technology areas. We are currently prosecuting class
25 action cases against Hotwire.com (internet travel company) and Vonage, Inc.
26 (internet telephone company) for unfair business practices. We have successfully
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1 prosecuted class action cases against Dell, Inc. and Sprint, LLC in recent years for
2 unfair business practices.

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4 9. Krause currently has six attorneys (including one of-counsel) and two
5 paralegals on staff. We are prepared to commit these resources, as needed, to the
6 representation of the putative class in this litigation.
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8 I declare under penalty of perjury under the laws of the United States of
9 America that the foregoing is true and correct.
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12 August 16, 2007

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Eric J. Benink